

79 Jan. 15

STATE REGISTER



STATE OF MINNESOTA

PROPOSED RULES

SUPREME COURT

STATE CONTRACTS

OFFICIAL NOTICES

RECEIVED

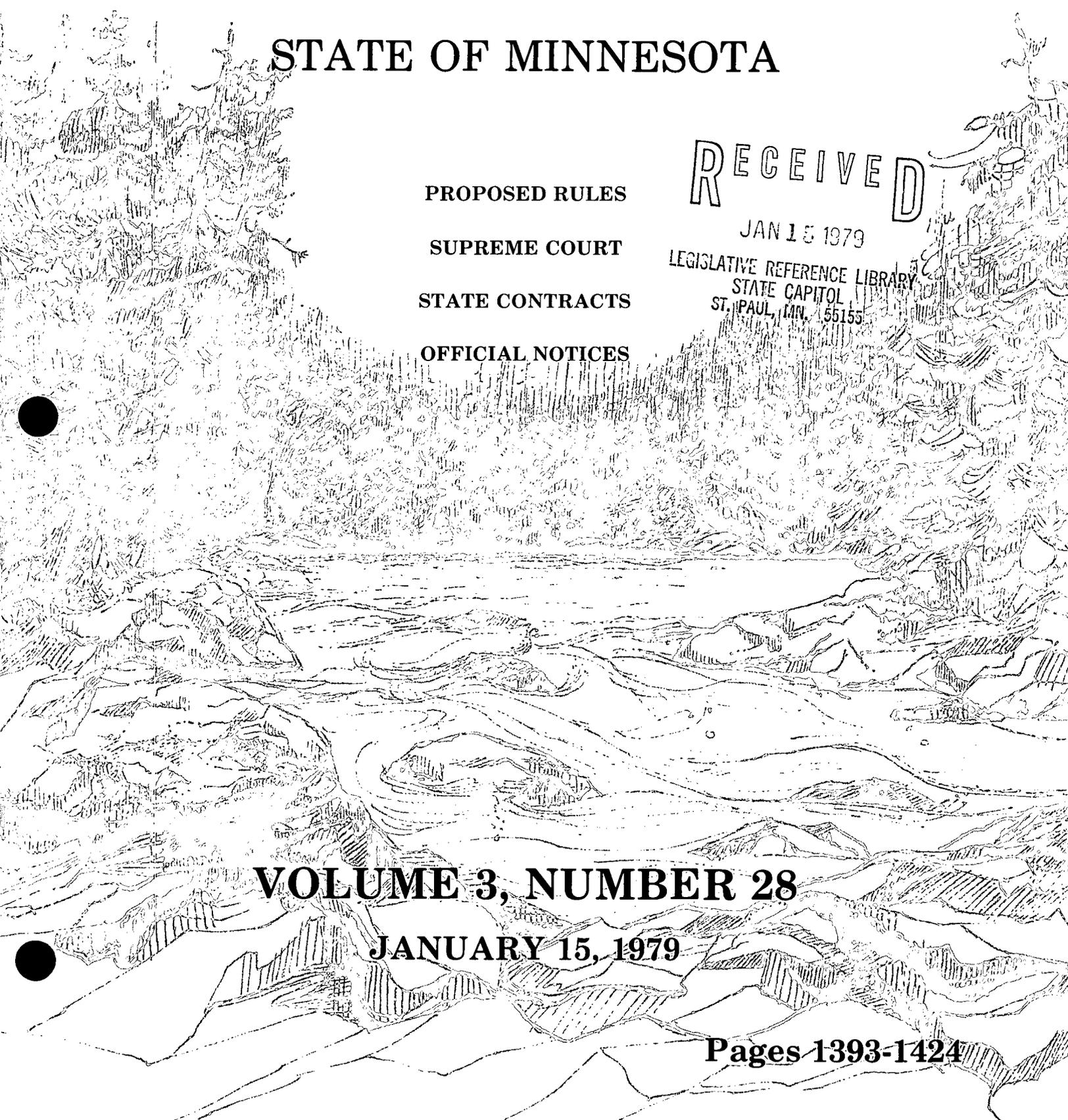
JAN 15 1979

LEGISLATIVE REFERENCE LIBRARY
STATE CAPITOL
ST. PAUL, MN. 55155

VOLUME 3, NUMBER 28

JANUARY 15, 1979

Pages 1393-1424



STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices.	Issue Date
SCHEDULE FOR VOLUME 3			
29	Monday Jan 8.	Monday Jan 15	Monday Jan 22
30	Monday Jan 15	Monday Jan 22	Monday Jan 29
31	Monday Jan 22	Monday Jan 29	Monday Feb 5
32	Monday Jan 29	Monday Feb 5	Monday Feb 12

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of Public Hearings on proposed rules are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$110 per year, and \$85 per year for additional subscriptions, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$2.25 per copy.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

The State of Minnesota has reserved a copyright to cross-reference tables, tables of contents, indices, numerical lists and codification guides, as provided in RGSTR 7 of the rules of the Office of the State Register.

Copyright © 1978 State of Minnesota

Albert H. Quie
Governor

Carol Anderson Porter
Editor

William G. Strusinski
Commissioner (Temporary)
Department of Administration

James Clancy, Paul Hoffman, Robin PanLener
Editorial Staff

Stephen A. Ordahl
Manager
Office of the State Register

Jack Richter
Information Officer

Roy Schmidtke
Circulation Manager

Cindy Riehm
Secretarial Staff

CONTENTS

MCAR AMENDMENTS AND ADDITIONS 1396

PROPOSED RULES

Department of Natural Resources
Proposed Rules Concerning Dam Safety 1397

Peace Officer Standards and Training Board
Proposed Rules Governing Standards of Conduct
for Peace Officers and Constables 1412

SUPREME COURT

**Decisions Filed Friday,
January 5, 1979** 1414

STATE CONTRACTS

**Department of Education
Instruction Division**
Notice of Opening for Writer to Develop, Rewrite,
Adapt, and Inservice Curriculum Materials for
Use in a One Semester Coastal Problems Course . 1415

OFFICIAL NOTICES

Office of the Governor
Statewide Health Coordinating Council
Nominations Solicited 1416

**Department of Education
Instruction Division**
Notice of Intent to Solicit Outside Opinions
Regarding Rules Relating to Health and Safety
Education, Minimum Standards for Secondary
Schools 1417

Energy Agency
Northern States Power Company Application
for Recertification of the In-Service Date for
Sherburne County Generating Unit No. 3 1417

Ethical Practices Board
Request for Advisory Opinion Regarding
Campaign Finance — Effective Dates of Tax
Credit Agreement 1418

**Minnesota Sentencing Guidelines
Commission**
Notice of Public Meeting 1418

Minnesota State Retirement System
Special Meeting, Board of Directors 1418

Pollution Control Agency
Order and Notice of Hearing Regarding State
Disposal System Permit for the Army Corps of
Engineers Dredge Material Disposal on the
Mississippi River, the St. Croix River and the
Minnesota River 1418

**Office of the Secretary of State
Administration Division**
Open Appointment Process: Notice of Openings on
State Agencies — Application Procedures 1421

Errata 1421

MCAR AMENDMENTS AND ADDITIONS

The following is a listing of all proposed and adopted rules published in this issue of the *State Register*. The listing is arranged in the same order as the table of contents of the *Minnesota Code of Agency Rules* (MCAR). All adopted rules published in the *State Register* and listed below amend the rules contained in the MCAR set. Both proposed temporary and adopted temporary rules are listed here although they are not printed in the MCAR due to the short term nature of their legal effectiveness. During the term of their legal effectiveness, however, adopted temporary rules do amend the MCAR. A cumulative listing of all proposed and adopted rules in Volume 3 of the *State Register* will be published on a quarterly basis and at the end of the volume year.

TITLE 4 COMMERCE

Part 13 Peace Officers Board

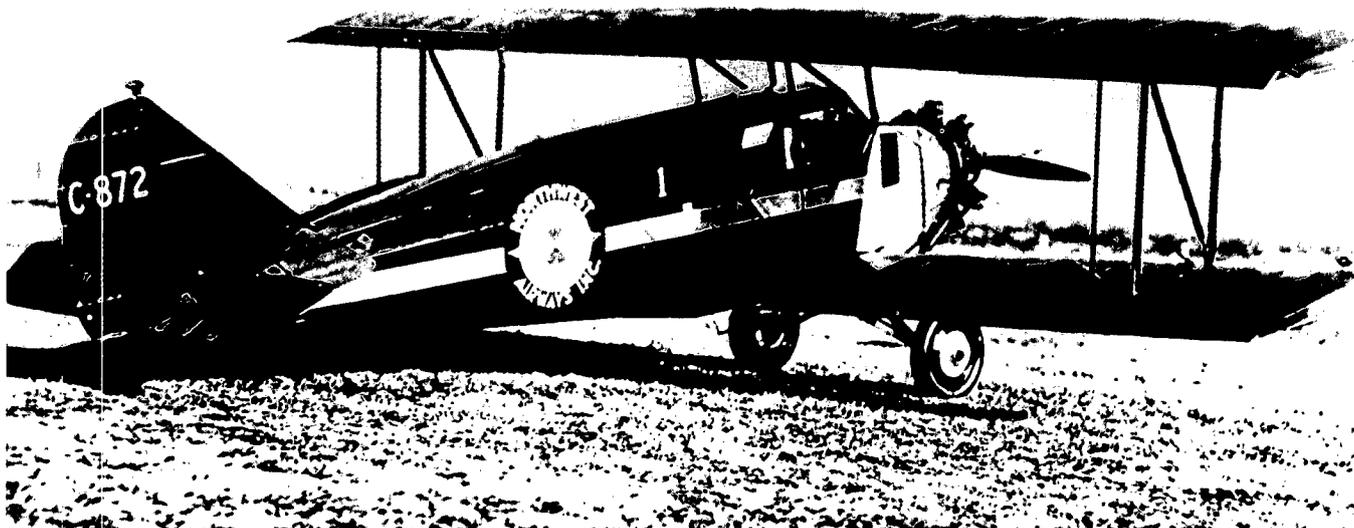
4 MCAR §§ 13.011-13.012 (proposed) 1413

TITLE 6 ENVIRONMENT

Part 1 Natural Resources Department

6 MCAR §§ 1.5030-1.5034 (proposed) 1397

PROPOSED RULES



AIRPLANES developed as an important means of travel and transportation in the early twentieth century. This plane was part of Northwest Airlines' first "fleet" in 1926. It is a Stinson "Detroit" and was the first closed-cabin plane used on a commercial airline. It held three passengers and cruised at eighty-five miles an hour. (Courtesy of the Minnesota Historical Society)

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Natural Resources Proposed Rules Concerning Dam Safety

Notice of Hearing

A public hearing on the above captioned rules will be held on Monday, February 12, 1979, beginning at 10:00 a.m., in the Weyerhaeuser Rm., Minnesota Historical Society, 690 Cedar St., St. Paul, Minnesota.

The proposed rules are authorized and required by Laws of 1978, ch. 779, § 8. They make specific the manner in which the Commissioner of Natural Resources exercises his authority over the construction, enlargement, repair, alteration, maintenance, operation, transfer of ownership, and abandonment of dams.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

PROPOSED RULES

The proposed rule defines "dam" to mean any artificial barrier, together with appurtenant works, which does or may impound water and/or waste materials containing water and which is greater than six (6) feet in height and has a storage capacity of more than fifteen (15) acre-feet at maximum storage elevation; any artificial barrier which is not in excess of six (6) feet in height regardless of storage capacity or which has a storage capacity not in excess of fifteen (15) acre-feet regardless of height, shall not be considered a dam. No circular tank or tank elevated above the ground to store water and/or waste shall be considered a dam.

The content of the rule is as follows:

6 MCAR § 1.5030 General provisions.

- A. Purpose.
- B. Scope.
- C. Jurisdiction.
- D. Definitions.
- E. Severability.

6 MCAR § 1.5031 Classification of dams.

6 MCAR § 1.5032 Procedure for existing dams.

- A. Applicant's responsibilities.
- B. Emergency work.
- C. Removal of dams.
- D. Inspections of existing dams by the Commissioner.
- E. Transfer of dams.
- F. Operation and maintenance.
- G. Termination of operations and perpetual maintenance.
- H. Investigations and studies.
- I. Permit cancellation, suspension or alteration.
- J. Reports to the legislature on publicly owned dams.

6 MCAR § 1.5033 Procedure for new dams or enlargement of dams.

- A. General outline of permit process.

B. Specific procedural requirements.

- 1. The permit application, preliminary report and filing fees.
- 2. Registered Professional Engineer's requirements.
- 3. Final design requirements.
- 4. Plans and specifications.
- 5. Other information.
- 6. Payment of dam inspection fees.
- 7. Commissioner's approval and issuance of permits.
- 8. Work inspection and construction reports.
- 9. As-built plans and data.
- 10. Statement of completion and affidavit of cost.
- 11. Issuance of impoundment approval by the Commissioner.
- 12. Performance report.

6 MCAR § 1.5034 Miscellaneous provisions.

- A. Limited liabilities.
- B. Owner's responsibilities.
- C. Liability of permittee.
- D. Owner's rights.
- E. Inspections.
- F. Compliance with other laws.
- G. Other permits and approvals.
- H. Acquisition of property.
- I. Assignment.
- J. Successors.
- K. Warning systems and emergency procedures.

All representatives of associations or other interested groups and all interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules by submitting either oral or written data, state-

PROPOSED RULES

ments or arguments. Statements or briefs may be submitted without personally appearing at the hearing.

Twenty-five days prior to the hearing a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

After the public hearing, written material may be submitted and recorded in the hearing record for five working days, or for a longer period not to exceed 20 calendar days if so ordered by the hearing examiner.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report) or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

One free copy of the proposed rules may be obtained by writing to Department of Natural Resources, Division of Waters, Box #32, Centennial Office Building, Saint Paul, Minnesota, 55155. Additional copies will be available at the door on the date of the hearing.

Under Minn. Stat. § 10A.01, subd. 11 (1976), a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute, "lobbyist" means any individual engaged for pay or other consideration or authorized by another individual or association to spend money who spends more than five hours of any month or more than \$250 not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or who spends more than \$250, not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. "Lobbyist" does not

include any: (a) public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity; (b) party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action; (c) individual in the course of selling goods or services to be paid for by public funds; (d) news media or their employees or agents acting in the ordinary course of business of publishing or broadcasting news items, editorials or other comments or paid advertisements which directly or indirectly urge official action; (e) paid expert witness whose testimony is requested either by the body before which he is appearing or one of the parties to a proceeding, but only to the extent of preparing or delivering testimony; or (f) stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over \$250, excluding travel expenses, in any year in communicating with public officials.

Questions regarding lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota, 55155; telephone (612) 296-1720.

Dated this 2nd day of January, 1979.

Joseph N. Alexander
Acting Commissioner

Rules as Proposed

6 MCAR § 1.5030 General provisions.

A. Purpose. The purpose of these rules is to regulate the construction and enlargement of dams, as well as the repair, alteration, maintenance, operation, transfer of ownership and abandonment in such a manner as to best provide for public health, safety and welfare. In the application of these rules, the Department shall be guided by the policies and requirements declared in Minn. Stat. ch. 105 and § 116.04.

The rules are pursuant to Laws of 1977, ch. 779, § 8 and are intended to be consistent with the goals and objectives of applicable federal and state environmental quality programs and policies including, but not limited to, mine-land reclamation, shoreland management, flood plain management, water surface use management, boat and water safety, wild and scenic rivers management, critical areas management, recreational or wilderness management, scientific and natural areas managements and protected vegetative species management.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

PROPOSED RULES

B. Scope. To achieve the purpose declared in 6 MCAR § 1.5030, the Commissioner hereby sets forth minimum standards and criteria for dam classification and identification or risk and hazards to health, safety and welfare. These rules further establish minimum standards and criteria for the review, issuance and denial of permits for proposed new and existing dam projects for water and waste impoundments in and adjacent to public waters of the state and for ordering repairs. This also includes dams for impoundment of waste containing water not specifically requiring a change in public waters.

C. Jurisdiction. These rules shall apply to all existing and proposed dams other than those owned by the United States or those that do not meet the size criteria (Section D., below), unless otherwise excluded in other sections of the rules. These rules are supplementary and complimentary to the rules which establish standards and criteria for granting permits to change the course, current or cross-section of public waters. (6 MCAR §§ 1.5020-1.5023, 1.5025 and 1.5026)

With the exception of dams not subject to these rules, in situations where the provisions of these rules are in conflict with other appropriate rules and requirements, those provisions which are the most restrictive shall apply.

All provisions of 6 MCAR § 1.5024 are superseded by these rules as they relate to dams as defined herein, not including the section relating to water level controls.

D. Definitions. For the purposes of these regulations, certain terms or words used herein shall be interpreted as follows: The word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.

These definitions are in addition to those contained in 6 MCAR § 1.5020 D. except where the same word is contained in both lists of definitions in which case the definitions in these rules shall apply in respect to dam safety administration.

"Alteration" means any activity which will affect the safety of a dam and/or which will result in a change in the course, current or cross-section of public waters.

"Commissioner" means the Commissioner of the Department of Natural Resources and any duly authorized representative of the department who may be assigned responsibilities and authorities for dam safety.

"Cost" for the purpose of this clause, includes labor and materials entering into the project; preliminary investigations and surveys; the cost of construction plant properly chargeable to the cost of the project; and any and all other items entering directly into the cost of the project. "Cost"

for the purposes of this clause, does not include costs of right-of-way, detached powerhouses, electrical generating machinery, and roads and railroads unrelated to the construction of the project affording access to the project.

"Dam" means any artificial barrier, together with appurtenant works, which does or may impound water and/or waste materials containing water and which is greater than six (6) feet in height and has a storage capacity of more than fifteen (15) acre-feet at maximum storage elevation; any artificial barrier which is not in excess of six (6) feet in height regardless of storage capacity or which has a storage capacity not in excess of fifteen (15) acre-feet regardless of height, shall not be considered a dam. No circular tank or tank elevated above the ground to store water and/or waste shall be considered a dam. In addition, the following shall not be considered as a dam for the purposes of these rules:

1. Earthen impoundment structures formed by construction of federal, state or local government state-aid roads which are primarily intended for transportation purposes;

2. Any artificial barrier constructed solely for the purpose of containment of sewage or biological treatment of wastewater which is under the jurisdiction of the Minnesota Pollution Control Agency.

This does not preclude the need for any permits from the Commissioner which may be required under applicable provisions of 6 MCAR §§ 1.5020 through 1.5026.

"Enlargement" means any change in or addition to an existing dam, which raises or may raise the storage elevation of the water or waste impounded by the dam.

"Height" means the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe of the dam or from the lowest elevation of the outside limit of the dam, if it is not across a stream channel or watercourse, to the maximum storage elevation.

"Maximum Storage Elevation" means the maximum elevation to which the dam will be constructed or to which water or waste materials can be effectively stored behind the dam on either a temporary or permanent basis, whichever is greater.

"Owner" means the owner of the dam if the dam is not sponsored by a governmental agency. If the dam is sponsored by an agency of the state, a political subdivision of the state, or the federal government, and if the sponsoring agency has an agreement under which it will be responsible for operation and maintenance of the dam, then that sponsoring agency shall be considered the "Owner."

PROPOSED RULES

“Reconstruction” means the rebuilding or renovation of an existing structure.

“Repair” shall include any work which will change the hydraulic capacity of a dam or entail any changes in the structural character of a dam.

“Surface” shall be determined by multiplying total dam length by average dam height.

“Total dam length” means length of all artificial containment structures, including the length of any artificially constructed dike, abutment or other structural additions appurtenant to the dam, which are part of, and essential to, the containment structure, but does not include the length of emergency spillways which are located outside the abutments of the dam.

“Verifying” means the development of data in the ordinary course of the construction and operation of the project.

E. Severability. The provisions of these rules shall be severable, and the invalidity of any paragraph, subparagraph or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision or any other part.

6 MCAR § 1.5031 Classification of dams. In order to safeguard the public health, safety and welfare, all existing and proposed new dams shall be classified by the Commissioner into the following three (3) classes with respect to the potential hazard.

Class I dams shall include those dams where failure, misoperation, overtopping or other occurrences or conditions may result in any loss of life or serious hazard or damage to health, homes, high-value industrial or commercial properties, major public utilities or serious direct, or indirect, economic loss to the public.

Class II dams shall include those dams where failure, misoperation, overtopping or other occurrences or conditions may result in possible health hazard or probable loss of high-value property, damage to major highways, railroads or other public utilities or limited direct, or indirect, economic loss to the public.

Class III dams shall include those dams where failure, misoperation, overtopping or other occurrences or conditions may result in property losses restricted mainly to rural buildings and local county and township roads which are an essential part of the rural transportation system serving the area involved.

Permits for a dam which is not classified as a Hazard Class I, II, or III dam, shall be subject only to applicable provisions of 6 MCAR § 1.5020 through 1.5026 and shall not be subject to these dam safety rules.

6 MCAR § 1.5032 Procedure for existing dams.

A. Applicant’s responsibilities. This section identifies the procedures to be followed for existing dams, excluding dams being enlarged.

Before commencing the repair or alteration of a dam, or removal of a dam so that it no longer impounds water or waste, the owner shall make a separate application to the Commissioner for each existing dam proposed to be changed upon forms provided by the Commissioner, except as provided in emergencies. The application shall contain the following:

1. The name and address of the owner or owners, or the sponsoring agency responsible for operation, maintenance and repair of the dam.
2. The proposed changes in the existing dam.
3. Maps, plans and specifications which set forth pertinent details and dimensions of the dam as the Commissioner may require.
4. The storage capacity of the impoundment.
5. The location, type, size and height of the dam and any appurtenant structures.
6. Other pertinent information concerning the dam as may be required by the Commissioner and any information appropriate to a thorough consideration of the safety of the change to the dam.
7. The proposed date of start and completion of the repair, alteration or removal.

The Commissioner may waive any of these requirements if found unnecessary. Work described herein is subject to the “Fees” provision of 6 MCAR § 1.5034 B. 6.

B. Emergency work.

1. Actions by the owner. In the event of an emergency where immediate action is necessary for public health, safety and welfare, repairs may be started immediately, but the owner shall notify the Commissioner at once of the

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated “all new material.”

PROPOSED RULES

emergency repairs. As soon as practicable, the owner shall apply for a permit for the emergency repairs and any necessary permanent repairs.

2. Commissioner's requirements. The Commissioner shall immediately require any repairs or remedial action necessary to protect public health, safety and welfare, if either:

a. The condition of any dam or impoundment is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation; or

b. Imminent floods threaten the safety of a dam or impoundment.

3. Commissioner's actions. The Commissioner may, in an emergency, require and enforce any of the following actions:

a. Lowering of the water level by releasing water from the impoundment behind the dam.

b. Completely emptying the impoundment.

c. Taking any other steps as may be essential to safeguard life and property.

C. Removal of dams.

1. Applications. Any owner of a dam seeking its removal must apply to the Commissioner for permission and comply with all required procedures the Commissioner may prescribe.

2. Evidence of removal.

a. Upon completion of the removal of a dam, evidence as to the manner in which the work was performed and the conditions obtained after the removal, shall be filed with the Commissioner.

b. The evidence shall show that a sufficient portion of the dam has been removed to eliminate the hazard directly attributable to the presence of the dam.

3. Final inspection. Before final approval of a dam is issued, the Commissioner shall inspect the work and determine that danger to public health, safety and welfare has been eliminated.

D. Inspections of existing dams by the Commissioner.

1. Hazard classification inspections. The Commissioner shall make initial inspections of each dam in the state

to determine the appropriate hazard classification according to criteria in NR 5031.

2. Dam safety inspections.

a. The Commissioner shall make, or cause to be made, an initial detailed systematic technical inspection and evaluations of every Class I, II, or III dam in order to assess the general condition of the dam with respect to safety. The inspection will include:

(1) a review and analysis of available data on the design, construction and operation of the dam;

(2) a visual inspection of the dam, appurtenant structures and downstream and upstream areas;

(3) a report shall be made of the general condition of the dam including, when possible, an assessment of hydraulic and hydrologic capabilities, structural stabilities and identification of any other conditions which constitute hazards to health, safety and welfare. Such report shall also include:

(a) a determination of any need for emergency measures or actions;

(b) a determination of the need for corrective actions relating to the design, construction and operation of the dam and appurtenant structures; and

(c) a determination of the need for additional detailed studies, investigations and analyses.

b. Technical areas to be investigated as part of the field inspections.

(1) Engineering data. Engineering data may include, but are not limited to, any data listed in Appendix I of "Recommended Guidelines for Safety Inspection of Dams", Appendix D, Department of Army, Office of the Chief of Engineers.

(a) To the extent feasible, engineering data relating to the design, construction and operation of the dam and appurtenant structures shall be collected from all available sources, including records of the owner.

(b) When necessary engineering data are unavailable or inadequate or invalid in respect to protection of health, safety and welfare, a list of deficiencies shall be made by the Commissioner, and the Commissioner may require that such information be provided by the owner.

(2) Visual field inspections. Visual inspections shall be made of the dam, appurtenant structures, impoundment area and downstream channel in the vicinity of

PROPOSED RULES

the dam including an examination of significant structural, geotechnical, hydraulic and hydrologic features including, where applicable, electrical and mechanical equipment for the operation of control facilities that affect the safety of a dam. Visual inspections shall include, but are not limited to, detecting evidence of leakage, erosion, seepage, slope instability, undue settlement, displacement, tilting, cracking, deterioration and improper functioning of drains and relief wells. The inspection shall also include an examination of the adequacy and quality of maintenance and operating equipment and procedures as they relate to safety of the dam. Other areas of inspection may include, but are not limited to, any of those listed in Appendix II "Recommended guidelines for safety inspection of dams". "Appendix D," Department of the Army, Office of the Chief of Engineers.

(3) Evaluation of hydraulic and hydrologic features. The evaluation of hydraulic and hydrologic features is required to determine the capability of the discharge and storage capacity of the dam for safely handling recommended design floods based on the size and hazard potential class of the dam. The safety evaluations involve constraints on water control such as blocked entrances, restrictions on operation of spillway and outlet gates, if any, inadequate energy dissipators or restrictive channel conditions, significant reduction in impoundment capacity by sediment deposits and other factors and material balance of the impoundment. Where essential design data are lacking, evaluations of watershed characteristics, rainfall and impoundment records may be used to evaluate effects of the dam.

(4) Evaluations of structural stability. The structural stability evaluations are made to determine the existence of conditions which are hazardous or which might develop into hazards and to formulate recommendations regarding the need for additional studies, investigations or analyses.

c. Timing of dam safety inspections.

(1) Subject to the availability of staff and funds, the Commissioner shall make or cause to be made, initial inspections of all Class I, II and III hazard dams as soon as reasonably possible based on the degree of hazard involved.

(2) After the initial detailed inspections and subject to the availability of funds and staff, the Commissioner shall make, or cause to be made, periodic inspections of dams based on the following schedule in order to determine their adequacy and their proper Hazard Classification:

(a) Class I dams, at least one time every year.

(b) Class II dams, at least one time every two years.

(c) Class III dams, at least one time every four years, provided that for such dams which were built in cooperation with a governmental sponsoring agency responsible for operation and maintenance the Commissioner shall utilize the services of the governmental sponsoring agency to the maximum extent possible and feasible to provide for periodic inspections.

3. Reports on inspections. Upon completion of the inspection of a dam, the Commissioner shall notify the owner of the dam, in writing, of the results and findings of the inspection and if a dam is unsafe or needs repair or corrective action, the Commissioner shall notify the owner and order such remedial action.

4. Need for further dam safety investigations. If the Commissioner determines that additional engineering investigations are necessary in order to determine the safety of a dam and the extent of needed repairs or alterations, he shall notify the owner thereof to cause such investigations to be made at the owner's expense and to file the results with the Commissioner for use in determining the conditions of dams and the degree and nature of repair, alteration or possible other action needed.

E. Transfer of dams. The owner shall not transfer the ownership of any Class I or II Hazard dam without a permit from the Commissioner. For Class III hazard dams, the owner, or the party to whom a dam is transferred shall apply to the Commissioner for a permit for the transfer of ownership within thirty (30) days after the ownership changes. Permits shall be issued based on evaluation of the hazard class, the conditions and the financial capabilities of the transferee.

No state department or agency and no county, city, town or other governmental entity may purchase or accept as a gift any privately owned dam subject to permit requirements until after: (1) the Commissioner has examined the dam, (2) the Commissioner has prepared a report of his examination and filed it with the legislature and (3) the legislature has had an opportunity to consider the report and has not prohibited the purchase or gift during the legislative session in which the report is filed, or if the report is filed when the legislature is not in session, the legislature has not prohibited the gift or purchase at the next succeeding session.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

PROPOSED RULES

F. Operation and maintenance.

1. Responsibilities. The owner shall operate and maintain the dam. Regulation of the maintenance and of the operation of the dam throughout its existence, insofar as necessary for public health, safety and welfare, is vested with the Commissioner.

2. Reports and records. The Commissioner may require owners to keep records of, and to report on maintenance, operation, staffing and engineering and geologic investigations and any other data necessary to secure maintenance and operation and to require staffing and engineering and geologic investigations in the interests of public health, safety and welfare. In addition, the owner shall fully and promptly advise the Commissioner of any sudden or unprecedented flood or unusual or alarming circumstance or occurrence affecting the dam.

3. Inspections and work requirements. The Commissioner, from time to time, shall make inspections of dams for the purpose of making safety determinations, but shall require owners to perform at their own expense work necessary to disclose information sufficient to enable the department to determine conditions of dams in regard to their safety and to perform at their own expense other work necessary to secure maintenance and operation which will safeguard life and property.

G. Termination of operations and perpetual maintenance.

1. Unless the dam is removed, the owner shall perpetually maintain the dam and appurtenances so as to ensure the integrity of the structure in order to achieve its intended and authorized functions and to protect public health, safety and welfare.

2. The Commissioner may impose such requirements as may be necessary, prior to the ultimate termination of the owner's operations, to insure that the owner will be financially responsible for carrying out the activities required for perpetual maintenance, and that adequate funding will exist.

3. In respect to dams utilized for waste disposal purposes, the owner shall prepare and submit to the Commissioner plans for termination of operations and perpetual maintenance which will address the owner's plans for both an unanticipated or premature termination of operations and for the ultimate intended termination of operations. The plans for termination of operations and perpetual maintenance shall, at a minimum, address the following issues, where applicable.

a. Perpetual maintenance and safety of the dam including adequate monitoring programs.

b. Disposal and treatment of ponded and channelled waters.

c. Monitoring and mitigation of surface water and groundwater pollution.

d. Silt, sedimentation and erosion control.

e. Vegetation and landscaping.

H. Investigations and studies. Relative to construction, operation, maintenance, enlargement, repair, alteration and abandonment of dams, the Commissioner shall require information of such nature and extent as to enable him to make a proper review and determination of the various features of the project as they relate to public health, safety and welfare.

I. Permit cancellation, suspension or alteration. Subject to all existing rights and remedies at law and subject to the rights of appeal in the manner provided by Minn. Stat. §§ 105.37-105.64 (1976):

1. As provided in Minn. Stat. § 105.44 (1976), the Commissioner may cancel or modify a permit at any time if the Commissioner deems it necessary for any cause for the protection of the public interests.

2. As provided in Minn. Stat. § 105.52, whether or not a dam is under permit, if the Commissioner determines that it is unsafe or needs repair or alteration, he shall notify the owner to repair, alter or remove the dam as the exigencies of the case may require.

3. As provided in Minn. Stat. § 105.64 for dams associated with the mining of iron ore, taconite, copper, copper-nickel or nickel, the Commissioner may:

a. Cancel or modify a permit at the request of or with the consent of the permittee.

b. Cancel, modify or suspend a permit, if any of its terms, or any law pertaining to the project is violated or necessary to protect the public health, safety or welfare, or to prevent substantial injury not authorized by the permit to public interests in lands or waters, or to persons or property.

c. For the same purposes as b. above, in an emergency suspend operations forthwith and require the owner or permittee to take any measures necessary to prevent or remedy the situation which has caused the emergency or imminent danger.

4. An order issued under paragraph 1., 2., 3.a., b. above is subject to the hearing provisions of Minn. Stat. §§ 105.44 and 105.462. An order issued under paragraph 3.c. above is effective on the date thereof, but shall not be in

PROPOSED RULES

effect for more than thirty (30) days from that date unless the permittee is on the same date mailed written notice of the order which includes notice of a Minn. Stat. § 105.44 public hearing on a date not more than thirty (30) days from the date of the notice.

5. If situations occur in the construction or operations authorized hereunder which may endanger the public health, safety and welfare, the owner/permittee shall notify the Commissioner immediately and shall immediately take corrective measures and cease construction or operations if the situation so requires.

6. If the Commissioner, pursuant to the terms of a permit, suspends or cancels a permit or orders the Permittee to cease operations permitted hereunder, the Permittee shall do so immediately.

J. Reports to the legislature on publicly owned dams. As required by Laws of 1978, ch. 779, § 7, the Commissioner shall make an annual report to the legislature on the status of dams owned by the state or local governmental units which shall include the following:

1. A listing of dams in need of repair or reconstruction.
2. The probable degree of severity of the need of repair or reconstruction.
3. The hazard classification of the dam.
4. The priority ranking of the need for action to repair or reconstruct a dam based on evaluation of items 2. and 3. above.
5. Recommendations for action including any requests for state share of matching funds for grants-in-aid to local governments as provided by Minn. Stat. § 105.482.

6 MCAR § 1.5033 Procedure for new dams or enlargement of dams.

A. General outline of permit process.

1. Construction of a new dam or enlargement of an existing dam shall include the following sequence of events for Hazard Class I & II dams.

a. A permit application, preliminary report outlining the proposed project and filing fees.

b. Certification that a professional engineer has been assigned to the project.

c. A final design report.

d. Detailed plans and specifications.

e. Other essential supporting data which the Commissioner may request.

f. Payment of dam inspection fees, where applicable.

g. Commissioner's approval and issuance of permit.

h. Work inspection and construction reports.

i. As-built plans and data.

j. Statement of Completion, and the Affidavit of Cost, where applicable.

k. Receipt of Impoundment Approval by Commissioner, where applicable.

l. Performance report.

2. For Hazard Class III dams the applicant (the owner or sponsoring agency where applicable) shall complete an application form and furnish a preliminary report, certification that a professional engineer has been assigned to the project, design data, plans and specifications, work inspection and construction reports and as-built plans and data as specified in 6 MCAR § 1.5033 Sections B.1., B.2., B.3., B.4., B.5., B.6., (where applicable), B.8., B.9., and B.10. (where applicable) with the following exception:

For Class III Hazard dams which are sponsored by an agency of the state, a political subdivision of the state or the federal government which has an agreement under which it will be responsible for operation and maintenance of the dam and also for Class III Hazard dams for which the design, construction supervision, and inspection is performed by a federal agency in accordance with provisions of the National Dam Safety Act PL 92-367 and applicable federal guidelines standards and requirements related to that act the Commissioner may waive certain details of the required submittals, provided that the federal agency will furnish the Commissioner with adequate facts on the design and construction inspection to allow the Commissioner to adequately evaluate the permit and approvals in respect to public health, safety and welfare.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

PROPOSED RULES

B. Specific procedural requirements.

1. The permit application, preliminary report, and filing fees.

a. The permit application. A separate application for each new dam proposed to be constructed or each existing dam proposed to be enlarged, shall be filed with the Commissioner upon forms provided by the Commissioner and shall contain the following:

(1) The name and address of the owner(s) or prospective owner.

(2) The purpose for the dam.

(3) The location, type, size and height of the dam and any appurtenant structures.

(4) The storage capacity of the impoundment.

(5) Other pertinent information as may be required by the Commissioner.

b. The preliminary report. The preliminary report shall consist of:

(1) A general description of the dam and all appurtenances. A statement of the purpose for which the dam is to be used and a statement setting forth the effect on the environment of such dam.

(2) Maps showing the location of the proposed dam, the County, Township and Section lines; the outline of the impoundment; the location of state, county and township roads; the locations of utilities, e.g. pipelines, transmission, telegraph and telephone lines; the topograph; and other structure or facility including human habitations affected by the proposed dam. State, county and U.S.G.S. maps and aerial photographs may be used for this purpose.

(3) A written report of surface conditions, i.e. geology, topograph and culture, which is based on a field examination by the applicant's engineer and other qualified personnel.

(4) Typical cross-sections of the dam accurately showing elevations, proposed impoundment levels and top width.

(5) Logs of borings in the foundation and in the borrow areas, and results of seismic and resistivity subsurface investigations, when they are readily available.

(6) Preliminary design assumptions, operational aspects, tentative conclusions and references. The design assumptions shall pertain to such hydrologic features as

drainage area, rainfall data, runoff, inflow, area-capacity-elevation data and flood routing, in addition to structural, geologic and geotechnical assumptions.

(7) A preliminary cost estimate of the structure and appurtenances thereto.

(8) Where applicable, future plans on ultimate project size including dams and impoundments.

(9) A general description of all other activities and elements which are related to and part of the total dam project, such as operational plans and details of smaller dams, dikes, diversions reclaim water facilities and other facility and utility lines including pipelines, roads and railroads. Separate permit applications will be required for each element or activity of a total dam project in accordance with appropriate provisions of 6 MCAR §§ 1.5020-1.5026 and will be submitted with the application for the dam.

c. Filing fees. Each application for a permit must include a \$15.00 fee in the form of a check or money order payable to the State Treasurer.

2. Professional engineer's requirements. The applicant must engage professional engineer(s) registered in the State of Minnesota or professional engineers acting solely as officers or employees of the United States as provided in Minn. Stat. § 326.13(3), who are proficient in dam engineering to prepare the engineering documents, plans and specifications and to inspect the construction, or enlargement and operation and maintenance of the dam.

All submitted material shall be certified for adequacy by a professional engineer, who shall not be an employee of the owner or of the construction contractor.

3. Final design requirements. Upon acceptance and agreement by the Commissioner of the preliminary report, the applicant shall submit to the Commissioner, for his approval, a final design report, together with plans and specifications and required fees. The final design report shall include, but not limited to, the following:

a. General description of the project, such as its function and service life, production rates, required storage and area(s); geological considerations such as physiography, topography, geology, seismicity, ground water conditions and maps; hydrologic studies such as physical features, climatology, design storm and design flood characteristics, flood routing, water-material balance, freeboard requirements, dam-break flood; geotechnical information, such as rock-soil sampling and logging, geophysical investigations, field and lab testing, instrumentation data; considerations of construction materials and their properties, such as quantities required, borrow and aggregate locations and volumes, field and lab work and investigations, concrete,

PROPOSED RULES

waste materials generation and placement techniques, investigation of the stored waste materials such as generations, transportation, mechanical/chemical/special testing, disposal practice.

b. Analytical determinations, such as seepage and underseepage studies, stability, deformation and settlement analysis; analytical and design details of facilities, such as dams, foundation, impoundment, abutments, spillways (for the purpose of these rules, spillway means any facility appurtenant to the dam available to discharge excess water and/or waste from the impoundment) or decant facilities, diversions, outlet works, instrumentation; operational aspects, such as impoundment operating criteria, initial filling criteria, responsibility and coordination, emergency procedures and warning systems; air, water and solid pollution controls, sedimentation and erosion controls; operational and post-operational maintenance and abandonment considerations; surveillance and inspection programs.

c. A detailed cost estimate of the structure and appurtenances.

d. Waiver of requirements.

(1) In instances wherein the physical conditions involved and the size of the dam or reservoir are such as to render the requirements as to drainage areas, rainfall, streamflow and drilling or prospecting of site unnecessary, the Commissioner may waive any of the requirements.

(2) Based on discussions between the applicant and the Commissioner and on evaluation of the hazards and risks involved, the Commissioner may waive any of the design requirements if they are found to be unnecessary.

4. Plans and specifications.

a. Plans. The plans shall consist of a bound portfolio of the drawings with all sheets being of the same size, and shall be of such scale that specifications can be drafted, and construction accomplished.

b. Specifications. These shall contain:

(1) The general provisions, specifying the rights, duties, responsibilities of the owner, designer, contractor and the prescribed order of work.

(2) The technical provisions describing approved work methods, equipment materials and desired end results.

(3) Special conditions.

5. Other information. The applicant shall also provide any other information or data concerning the dam, which is pertinent to the consideration of public health, safety and welfare, as may be required by the Commissioner.

6. Payment of dam inspection fees.

a. Fees required.

(1) Initial dam inspection fees:

(a) Payment of fees. An initial dam inspection fee shall accompany all applications for permits for dam construction, reconstruction, removal or any change in the dam with the following exception:

No initial dam inspection fee shall be charged to any state agencies, political subdivisions of the state and federal agencies nor to owners of any Class I, II, or III dams which are sponsored by a state agency, political subdivision of the state or federal agencies who are responsible for operation and maintenance of the dams or for any Class III Hazard dam for which the design, construction supervision, and inspection is provided by a federal agency in accordance with provisions of the National Dam Safety Act PL 92-367 and applicable federal guidelines, standards and requirements related to that act.

(b) The initial dam inspection fee shall be based on the formula and system established by these rules, and no field inspection fees for dams pursuant to 6 MCAR § 1.5000 shall be charged to the applicant, unless the actual cost of the field inspection of a dam as itemized and certified by the Commissioner, is greater than the amount of money collected under provisions of 6 MCAR § 1.5033 B.6.

(c) In the event that the actual costs of field inspection of a dam by the Commissioner exceeds the amount paid by the applicant under 6 MCAR § 1.5033 B.6.b., the Commissioner shall provide an itemized and certified listing of the costs of field inspection of the dam and may charge the applicant sufficient fees pursuant to provisions of 6 MCAR § 1.5000 for the additional costs incurred, but not compensated for by the initial dam inspection fees levied under 6 MCAR § 1.5033 B.6.b.

(2) Periodic inspection fees. Each owner of a dam, except those exempted under Section 1.5033 B.6.a.(1)(a) shall be charged periodic field inspection fees for each year an inspection is made pursuant to Section

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

PROPOSED RULES

1.5032 D.2.c., for the purpose of providing funds for periodic inspection of dams according to the following schedule:

(a) A minimum fee of \$30.00 per dam plus an additional fee based on surface of the dam as follows:

(i) For the first 1,000 square feet of surface \$0.01 per square foot.

(ii) For each square foot in excess of 1,000 square feet of surface \$0.001 per square foot.

The periodic inspection fee, for each year in which an inspection is made, is payable at the end of each state fiscal year, beginning July 1 and ending the following June 30. The first fee is payable on or before June 30, 1980 for any periodic inspections made during July 1, 1979 and June 30, 1980.

b. Procedure for determining initial dam inspection fees.

(1) With the exception of the exemptions noted in Section 1.5033 B.6.a.1.(a), the following dam inspection fee shall accompany each application for a permit required under Chapter 105, for a new dam or for enlargement or repair of an existing dam.

(a) For the first \$100,000 of estimated cost, a fee of two and one-half percent.

(b) For the next \$400,000 of estimated cost, a fee of one and one-half percent.

(c) For the next \$500,000 of estimated cost, a fee of one percent.

(d) For all costs in excess of \$1,000,000 a fee of one-half of one percent.

(2) For all dams, subject to initial dam inspection fees, which will be totally constructed to a maximum storage elevation within 5 years of the date construction begins the applicant shall submit a certified estimate of the cost with his application together with the appropriate fee based on cost. Upon completion of the project, the applicant shall file, with the Commissioner, an affidavit of the final total costs of construction. If the final total cost exceeds the estimate, the applicant shall pay the difference between the fee paid and the fee required based on the final total cost according to the schedule of 6 MCAR § 1.5033 B.6.b.(1) and 6 MCAR § 1.5033 B.6.c.

(3) For dams, subject to initial dam inspection fees, which will not be totally constructed to maximum storage elevation within 5 years of the date construction

begins, such as dams for storage of mining waste materials, the applicant shall provide the Commissioner a work schedule outlining the proposed staging of dam construction and shall submit a certified estimate of costs based on staging of dam construction or based on an estimate of costs at construction intervals not exceeding 5 years in duration. At the end of each stage of dam construction, or at construction intervals not exceeding 5 years in duration, throughout the period of total construction until the maximum storage elevation is reached, the applicant shall file with the Commissioner an affidavit of costs for each stage or construction interval not exceeding 5 years in duration. If the actual cost, at the end of a stage or construction interval, exceeds the estimate the applicant shall pay the difference between the fee paid and the fee required, based on the actual cost, according to the schedule of 6 MCAR § 1.5033 B.6.b.(1).

Commissioner's approval and issuance of permits.

a. In reviewing proposals for new dams, the Commissioner will evaluate the potential hazards and risks to the health, safety and welfare of the public and to the environment in the vicinity of the proposed dam. Probable future development of the area downstream from the dam will be considered in evaluating potential hazard and risks.

(1) Permits to construct dams which would be in Hazard Class I shall not be approved unless there is justification for the construction of the dam at the proposed location. Such justification shall include but is not limited to, a showing of lack of other suitable feasible and practical alternative sites, and economic hardship which would have a major adverse effect on population and socio-economic base of the area involved.

(2) Permits to construct dams which would be in Hazard Class II shall not be approved unless there is justification for the construction of the dam at the proposed location. Such justification shall include, but is not limited to, a showing of lack of other suitable feasible and practical alternative sites and that the dam will benefit the population or socio-economic base of the area involved.

(3) In the event that justification is provided for construction of any Hazard Class dam, the applicant may be required by the Commissioner to take measures to reduce risks.

(4) The Commissioner shall furnish information to local governments which have legal authority to control land use, regarding the classification together with recommendations for present and future land use controls which should be implemented to insure that risks to downstream areas will be minimized.

b. In considering the issuance of a permit, the

PROPOSED RULES

Commissioner shall determine if the proposal is adequate with respect to the following:

(1) The need in terms of quantifiable benefits.

(2) The stability of the dam, foundation, abutments and impoundment under all conditions of construction and operation. An adequate margin of safety must be provided against liquefaction, shear failure, seepage failure, overturning, sliding, overstraining and excessive deformation, under all loading conditions including earthquake. These conditions must be based on current, prudent engineering practice, and the degree of conservatism employed must depend on hazard and risks as outlined in 6 MCAR § 1.5021.

(3) The discharge capacity and/or storage capacity of the dam, appurtenances and impoundment shall be capable of handling the design flood which must be based on current, prudent engineering practice and the hazard potential classification as provided in 6 MCAR § 1.5031.

(4) The project in its totality must be in compliance with prudent, current environmental practice throughout its existence. In particular, the project must meet the State's pollution standards for ground water, surface water and air quality throughout its existence. The Commissioner shall consider the effects and impacts on the natural environment based on state and federal environmental laws, rules and requirements.

(5) The cost of that portion of engineering evaluations and studies relating to the safety of dams which is also part of the final design report outlined in 6 MCAR § 1.5033, performed for the applicant by professional engineers, and which were included with Environmental Impact Statements required under applicable State and Federal Environmental Laws shall be subtracted from the total cost determined under 6 MCAR § 1.5033 B.6., provided that the applicant provides the Commissioner with a notarized statement which includes a detailed accounting of expenditures for such dam safety related professional engineering evaluations and studies.

(6) The Commissioner shall keep annual records of the costs incurred in inspection and monitoring of new or enlarged dams and repairs to existing dams before, during and after construction and such cost record shall be provided upon request of any applicant who paid inspection fees.

8. Work inspection and construction reports.

a. Conformity with approved designs, plans and specifications.

(1) The permittee, in cooperation with its designer, shall be responsible for providing adequate controls of construction and operation activities and for verifying design, construction and operation assumptions. The owner may engage a registered professional engineer to operate and inspect the construction of the project, but the designer should also periodically inspect the said structures.

(2) All construction shall be carried out in accordance with the approved design, plans and specifications. No alteration, modification or addition to the approved designs, plans, and specifications that could affect the safety and adequacy of the dam shall be made by the permittee without prior permission of the Commissioner. Such approvals shall be provided as rapidly as possible to preclude interference with construction work schedules. Records of alterations, modifications, or additions to the approved design, plans, and specifications, for which written approval of the Commissioner was not required shall be submitted with the Construction Report (Section 1.5023, B.8.d.).

(3) If the permittee finds at any time during construction or operation that, in order to adequately protect public health, safety or welfare or the environment alterations to the approved design, plans and specifications are required, the permittee shall promptly notify the Commissioner of such requirements and shall revise the designs, plans and specifications and submit the revisions to the Commissioner for approval. Emergency short term revisions may be made by the permittee followed by prompt notice to the Commissioner. If such short term revisions are to remain as permanent project features, they shall be subject to approval by the Commissioner.

(4) During the construction or operation of a dam, the Commissioner shall make inspections for the purpose of securing conformity with approved designs, plans and specifications and shall require the owner to perform, at the owner's expense, work or tests as found necessary to disclose sufficient information to enable the Commissioner to determine if there is conformity with approved designs, plans and specifications.

(5) If, after any inspections, investigations or examinations or at any time as work progresses, the Commissioner finds that amendments, modifications or changes are necessary to protect health, safety, welfare and the envi-

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

PROPOSED RULES

ronment, the Commissioner may order the owner to revise designs, plans and specifications.

(6) In the event that conditions imposed by the Commissioner as part of the original designs, plans and specifications may be waived or made less burdensome without sacrificing a proper margin of adequacy and safety, the Commissioner may authorize an owner to revise designs, plans and specifications.

(7) If, at any time during construction, enlargement, repairs or alterations of a dam the Commissioner finds that the work is not being done in conformance with approved designs, plans and specifications, the Commissioner shall notify the owner and shall order immediate compliance.

(8) The Commissioner may order that no further work on a dam be done until such compliance has been effected and approved by the Commissioner.

(9) Failure to comply with the approved designs, plans and specifications shall render the approvals subject to revocation if compliance is not made.

(10) If conditions are revealed which will not permit the construction of a safe dam, the permit may be revoked.

(11) At his discretion, the Commissioner may observe and approve foundation preparation and may approve construction material placement on an intermittent or continuing basis when field conditions dictate. The Commissioner shall be notified at least (3) days in advance of construction material placement.

b. Acceptance of permit or approval. Initiating or undertaking any work or part thereof, by the permittee, authorized in an issued permit or approval, constitutes acceptance of all terms and conditions contained therein.

c. Permanent markers. At least one (1) permanent marker for vertical and horizontal control shall be established in the natural ground by the permittee in the vicinity of each dam structure. The permanent marker for vertical control must be based upon datum and degree of accuracy based upon considerations of the hazards involved and the size of the dam, as specified by the Commissioner.

Each marker shall be located so as to be accessible and protected against disturbance throughout the existence of the dam. The permittee shall submit to the Commissioner the locations of these permanent markers plotted on the best available maps or plans within time limits prescribed by the Commissioner.

d. Construction report. The permittee shall submit

monthly to the Commissioner a report on construction observation and quality control. The report shall include, but is not limited to, daily construction documentation; foundation preparation and treatment; construction quality control tests; maintenance of records and summaries of actual tests of foundation and construction materials, cut-off trench, grouting, etc.; instrumentation installation and maintenance of instrumentation records and instrumentation readings; geologic mapping, if any, of exposed foundations; preparation of logs of drill holes and other exploration features, if any, completed during construction; review and evaluation of disclosed field conditions by the designer; and any other items which may be pertinent to a construction quality assurance program.

9. As-built plans and data. Immediately upon completion of a new dam or reservoir or enlargement of a dam, the owner shall file with the Commissioner supplementary drawings or descriptive matter showing or describing the dam as actually constructed, or any other items which may be of permanent value and have a bearing on the adequacy and permanency of the dam.

In connection with the enlargement of a dam, the supplementary drawings and descriptive matter need apply only to the new work.

10. Statement of completion and affidavit of cost.

a. Statement of completion. As soon as practicable following the completion of construction, the permittee shall notify the Commissioner, by certified mail. The notification shall include a statement on the part of the designer of the professional engineer in charge of the construction inspection that to the best of knowledge, the dam was completed in accordance with the approved designs, plans and specifications and any approved revisions thereof.

b. Affidavit of cost. As soon as possible after giving notice of completion, the owner shall file an affidavit with the Commissioner stating the actual cost of the dam in detail. In the event the owner of a new or enlarged dam is unable to report the actual cost of construction or enlargement, an affidavit to this effect shall be filed within thirty (30) days after written request by the Commissioner, stating the reasons therefor. The Commissioner shall then make an appraisal of the cost of construction or enlargement and determine what further fee, if any, is required. If a further fee is required, the Commissioner shall notify the owner by certified mail of the amount of such fee within fifteen (15) days and that the owner may appear within sixty (60) days thereafter before an authorized representative of the Commissioner to protest the amount of the fee, in whole or in part and the sufficiency of the appraisal upon which such determination was based.

11. Issuance of impoundment approval by the Com-

PROPOSED RULES

missioner. Impoundment approvals are necessary for Class I and Class II Hazard Dams to provide assurances that the dam has been constructed as safely as possible in accordance with detailed plans and specifications and to allow adequate time for inspection of the completed dam and its foundations before actual impoundment begins.

The type of dam, the location, the hazard involved, and the purpose served by the dam will be considered in respect to the degree and nature of impoundment approval needed. Certain waste disposal dams will be constructed over a considerable period of years and will require a series of impoundment approvals for various stages of construction.

Upon request by the owner, an Impoundment Approval shall be issued upon a finding by the Commissioner that the dam is adequate to impound water and/or waste within the limitations prescribed. Pending issuance of an Impoundment Approval by the Commissioner, the owner of the dam shall not, through action or inaction, allow an impoundment upstream of the dam.

a. Each Impoundment Approval issued by the department may contain such terms and conditions as the Commissioner may prescribe.

b. The Commissioner may revoke any Impoundment Approval if it is determined that the dam becomes a danger to public health, safety and welfare. Whenever action is necessary to protect public health, safety and welfare, the Commissioner may also amend the terms and conditions of any Approval by issuing a new Approval containing revised terms and conditions.

c. The owner of a dam for which an Impoundment Approval has been issued shall not, through action or inaction, cause the dam to impound water and/or waste after the Approval terminates unless a new Approval is issued for the dam. A new Approval shall be issued upon a finding by the Commissioner that the dam is adequate to impound water and/or waste within the limits prescribed in the Approval.

12. Performance Report. The permittee shall submit yearly to the Commissioner a Performance Report detailing the instrumentation data and analysis and interpretation of these data as they relate to the safety of the dam and design assumptions. The frequency of submission of this report may be modified if field conditions so dictate.

6 MCAR § 1.5034 Miscellaneous provisions.

A. Limited State liabilities. The granting of a permit for

a dam shall not impose any liability upon the State of Minnesota, its officers, employees, agents or consultants, for any damage or injury to any persons or property resulting from the activities of the permittee under the permit. Any permit shall be permissive only and shall not be construed as estopping or limiting any legal claims of persons other than the State against the permittee, its agents or contractors, for any damage or any injury to any persons or property, or to any public water supply resulting from such operations, or as estopping or limiting any legal claims of the State against the permittee for violation of any of the terms or conditions or the permit. No action shall be brought against the State or the Commissioner for the recovery of damages caused by the partial or total failure of any dam or through the operation of any dam upon the ground that such defendant is liable by virtue of any of the following:

1. Any approval of the dam or appurtenant facilities.
2. The issuance or enforcement of orders relative to maintenance or operation of the dam.
3. Control and regulation of the dam.
4. Measures taken to protect against failure during an emergency.

B. Owner's responsibilities. Nothing in these rules shall be construed to relieve an owner of a dam of the legal duties, obligations or liabilities incident to the ownership or operation of the dam.

C. Liability of permittee. The permittee shall assume all legal risks and liabilities, including without limitation those for damages or any injury to persons or property, arising from the construction, operation, maintenance, alteration or abandonment of the dam and impoundments and other activities authorized under permit relating to dams.

D. Owner's rights. Nothing in these rules shall be construed to deprive any owner of such recourse to the courts as he may be entitled to under the laws of this State.

E. Inspections. Owners of dams shall allow the Commissioner prompt access to and inspection of all records, plants, structures, facilities and operations at all reasonable times as may be necessary to monitor compliance with the terms of existing permits and to insure protection of the public health, safety and welfare. Entry for the purposes indicated is subject to reasonable compliance with the owner's safety rules and avoidance of unreasonable impairment of or interference with construction and operation of the dam. The

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

PROPOSED RULES

Commissioner's inspection shall be limited to testing and observing, rather than supervising the construction, operation, maintenance, alteration or abandonment of the dam. The Commissioner's inspections shall not relieve the owner, or the designer, or the professional engineer in charge of construction, operation, maintenance, alteration or abandonment, from the full responsibility of providing adequate inspection and supervision.

F. Compliance with other laws. The owner of a dam shall comply with all federal laws and regulations relating to any structures, facilities or operations under the permit and shall obtain such permits from federal authorities as may be required therefor. The owner shall comply with all state laws and regulations in effect now or adopted hereafter relating to such structures, facilities and operations, including but not limited to, any laws and rules regarding mineland reclamation subject to the provisions of a permit.

G. Other permits and approvals. Although it is the intent of the Commissioner to maintain consistency with the permits of other agencies, nothing in any permit shall waive or abrogate any other state or federal approvals or permits which may be necessary for the project involved. Any permit conditions for dams shall not waive or abrogate any conditions, whether similar or more stringent, which may appear in any other permit or approval.

H. Acquisition of property. In all cases where the activities authorized by a permit shall involve the taking, using or damaging of any property, rights, or interests of any other person or persons, or of any publicly owned lands or improvements thereon or interests therein, the permittee, before proceeding, shall acquire all necessary property, rights, interests or permissions. In case the authorized activities shall include the alteration, relocation or replacement of any public highway or other publicly owned facility, the permittee shall pay the cost thereof as may be required by the appropriate public authority.

I. Assignment. Permits for dams may be assigned in whole or in part, but no assignment shall be effective until written notice thereof is filed in the office of the Commissioner, and the Commissioner approves the assignment in writing.

J. Successors. Provisions of the issued permit shall extend to and bind the successors in authority of the Commissioner and the legally assigned successors in interest of the permittee.

K. Warning systems and emergency procedures.

1. In the event that an existing or new dam is classified as a Class I or II Hazard dam, the owner shall prepare and file with the Commissioner, for approval, a contingency plan for notifying any persons whose lives, property or

health may be endangered by failure, misoperation or other circumstances or occurrence affecting the dam. The contingency plan shall include:

a. The most practical and expeditious means for warning downstream property owners and residents.

b. Consideration of the time factor involved in providing warning based on the proximity of the dam to parties who may be affected.

2. In the event there is no feasible or practical means to provide for adequate warning due to insufficient time before a catastrophe occurs and downstream parties can be notified to evacuate, the owner shall be responsible for giving appropriate notification to any downstream property owners that there is no practical and feasible means for warning in emergency situations.

These rules, 6 MCAR §§ 1.5030-1.5034, are subject to the public hearing provisions of Minn. Stat. §§ 105.44-105.462.

Peace Officer Standards and Training Board

Proposed Rules Governing Standards of Conduct for Peace Officers and Constables

Notice of Hearing

Notice is hereby given that a public hearing on the proposed permanent rules of the Peace Officer Standards and Training Board will be held on February 20, 1979 beginning at 9:30 a.m. at the Metropolitan Council, 3rd Floor, Metro Square Building, Hearings Room; on February 21, 1979 at 9:30 a.m., Department of Commerce, 5th Floor, Metro Square Building, Hearings Room; on February 22, 1979 at 7:00 p.m., Rm. 217 Lecture Center Building, Southwest State University, Marshall, MN; on March 1, 1979 at 1:30 p.m. and 7:00 p.m. at the St. Louis County Board Room, 2nd Floor, 5th Avenue West at 1st Street, Duluth, MN 55802.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted by mail to Natalie Gaull, Hearing Examiner, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8114, either before the hearing or within twenty (20) days after the close of the hearing.

The proposed rules, if adopted, would govern the Standards of Conduct for peace officers in certain specified

PROPOSED RULES

areas and delineate the responsibilities of local units of government in terms of regulating the conduct of their own peace officers. Copies of the proposed rules are now available and one (1) free copy may be obtained by writing to: POST Board, 5th Floor Metro Square Building, Saint Paul, Minnesota 55101, telephone (612) 296-2620. Additional copies will be available at the door on the date of the hearing. The POST Board's authority to promulgate the proposed rules is contained in Minn. Stat. §§ 626.84 to 626.855 (1978).

A Statement of Need explaining why the board feels the proposed rules are necessary and a Statement of Evidence outlining the testimony it will be introducing will be filed with the Hearing Examiner's Office at least twenty-five (25) days prior to the hearing and will be available at that location for public inspection.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1976), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as promulgation of these rules, must register with the Ethical Practices Board as a lobbyist within five (5) days of the commencement of such activity by the individual.

December 28, 1978

Mark K. Shields
Executive Director

Rules as Proposed

4 MCAR § 13.011 Standards of conduct.

A. Scope. The rules promulgated in this section are adopted pursuant to the express legislative mandate of Minn. Stat. § 626.843 subd. 1(e). Nothing in these rules shall preclude or prevent any agency, political subdivision, civil service commission or other appointing authority from publishing and enforcing rules, policies or procedures which are more comprehensive than those minimum statewide standards set forth hereinafter. The responsibility for enforcing any rules, policies or procedures which are more comprehensive than the following minimum standards of conduct shall remain with the promulgating agency, political subdivision, commission or appointing authority.

B. Statement of purpose. The board believes that in order for the public to have complete confidence in the integrity and ability of law enforcement, it is paramount that peace officers demonstrate that they are capable of self-regulation. The board further believes that internal discipline is properly a function of the appointing agency and its political subdivision. These standards of conduct relate to

licensure only and violations thereof do not enlarge on a peace officer's civil or criminal liability in any way.

C. Responsibilities of individual agencies. Agencies shall establish comprehensive written rules or policies for the administration of internal discipline. Such rules or policies should include simple and direct procedures whereby individuals may register written complaints concerning alleged misconduct by peace officers. The local agency shall provide that complaints shall be promptly and thoroughly investigated. At the conclusion of the local agency investigation the findings shall be made known to the complainant.

1. Such written rules, policies and procedures shall be furnished to all peace officers within the agency.

2. Within 1 year of the effective date of § 13.011 each agency shall file with the Board a verified statement of compliance of § 13.011 C.

3. Commencing July 1, 1981 each agency shall file with the Board on an annual basis a verified statement of compliance with § 13.011 C.

4 MCAR § 13.012 Standards.

A. Violations of the following Standards of Conduct by a licensed peace officer shall be grounds for revocation or non-renewal of license:

1. The commission of a felony in this state or in any other state or federal jurisdiction or of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota.

2. The use of deadly force when not authorized by Minn. Stat. § 609.066.

3. To make a false material statement under oath to the Board which the peace officer does not believe to be true.

4. To have made a false material statement to the Board while obtaining or renewing a license.

5. Failure to comply with the Board's continuing education requirements as set forth in 4 MCAR § 13.008.

6. Failure to pay the licensing fee as set forth in 4 MCAR § 13.007.

7. Violation of Board rules as set forth in 4 MCAR § 13.001-§ 13.020.

B. Complaints: investigation and hearing. Complaints, investigations and hearings under rule § 13.012 shall be pursuant to Minn. Stat. § 214.10 and § 214.11.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

SUPREME COURT

**Decisions Filed Friday,
January 5, 1979**

Compiled by John McCarthy, Clerk

**48205 and Hennepin County Court Employees
48276/222 Group, petitioner, vs. Public Employment
Relations Board and County of Hennepin,
intervenor, Appellants. Hennepin
County.**

Court employees are essential employees under Minn. St. 179.63, subd. 11. Affirmed. Wahl, J. Took no part, Otis, J.

**48222 and Collins Truck Lines, Inc., et al, Appel-
48305/315 lants, vs. Metropolitan Waste Control
Commission. Anoka County.**

Where the provisions of a purchase agreement concerning the sellers' rights to repurchase and to lease the property were reasonably susceptible of only one construction, the

district court did not err in finding no ambiguity and declaring judgment in favor of the buyer's successor.

Affirmed. Wahl, J. Took no part, Otis, J.

Order Filed January 2, 1979

**47327/444 In the Matter of the Application for the
Discipline of Paul H. Ray, an Attorney at
Law of the State of Minnesota. Supreme
Court.**

Now, therefore, it is hereby ordered, that Paul H. Ray is suspended indefinitely from the practice of law in the State of Minnesota, and that on or after December 14, 1979, this court will consider his petition for reinstatement to practice upon application by Mr. Ray and demonstration by him that he could be so reinstated subject to such conditions or limitations that the public interest would be furthered and the possibility of prejudice to the public eliminated.

Suspended indefinitely. Sheran, C. J.

STATE CONTRACTS

Pursuant to the provisions of Laws of 1978, ch. 480, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Education Instruction Division

Notice of Opening for Writer to Develop, Rewrite, Adapt, and Inservice Curriculum Materials for Use in a One Semester Coastal Problems Course

A writer is needed by the Department of Education on January 31, 1979 for the purpose of designing materials appropriate for a Coastal Problems course (a one semester social studies course).

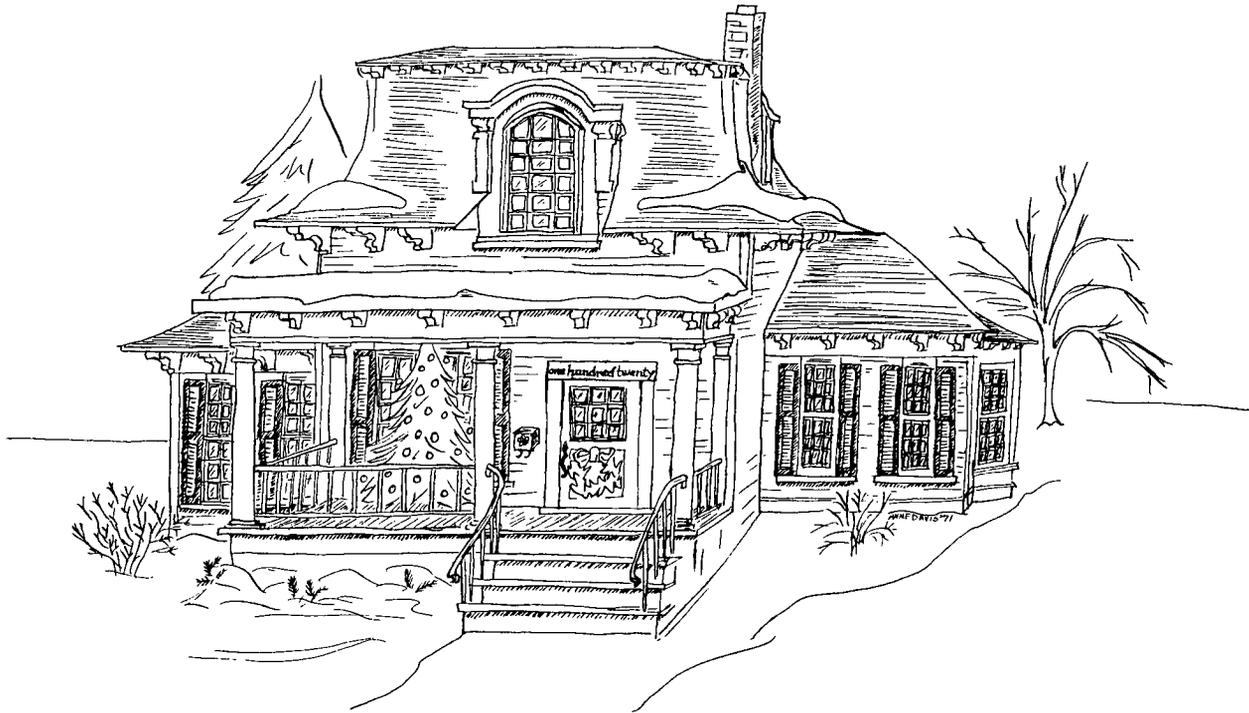
The writer must be familiar with the Marine Social Studies Project and the materials they developed (University of Hawaii), and have had extensive curriculum development experience.

The writer will work with a multiagency task force which will trial test developed and adapted curriculum materials. The writer will also inservice participating teachers.

The estimated contract will be about \$7,500.00. This amount includes curriculum development, artwork, inservice, evaluation and the printing of the trial draft.

Interested persons should contact Mr. Richard C. Clark, Science Specialist, Capitol Square Building, 550 Cedar St., St. Paul, MN 55101.

OFFICIAL NOTICES



The Anne T. Davis home at 120 East Wabasha Street, built in 1863 in the original plat of Winona, is French Second Empire style with a mansard roof. During the Bicentennial year it was chosen as one of the historically and architecturally interesting homes in the city. The history of the river town and lumber center is reflected in the occupations of the former owners, a steamboat captain and a lumberyard owner. (Drawing courtesy of Anne T. Davis)

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Office of the Governor Statewide Health Coordinating Council Nominations Solicited

Notice is hereby given that nominations are being accepted by the Governor to fill vacancies on the Statewide Health Coordinating Council (SHCC). Membership of individuals appointed to the SHCC for a two year term will expire. Pursuant to the provisions of the National Health Planning and Resources Development Act of 1974 (Public Law 93-641) and the SHCC operating procedures, the Governor appoints mem-

bers to fill those vacancies. Each of these appointments to the SHCC will be for a term of three years. Consistent with SHCC operating procedures, any such vacancies hereafter will be filled by the Governor using this same nomination procedure.

Minnesota's SHCC has been established in accordance with P.L. 93-641, Section 1524 and Title 42 Code of Federal Regulations, Part 123.301-303, and Minnesota Executive Order 60A. The SHCC consists of 35 members representing both consumers and providers of health care. Twenty-one of these members are representatives of the state's seven health systems agencies (HSAs). Two of the HSA representatives are consumers of health care and one is a provider of health care. There are 13 at-large members and one representative of the Veterans Administration facilities in the state.

To comply with federal requirements and to insure an effective Council in the state, the Governor's office has reissued guidelines for selection of nominees to the SHCC. The process for selecting nominees to the SHCC from each HSA must be consistent with these guidelines:

1. Of the three representatives entitled to each HSA, two must be consumers of health care and one must be a provider of health care. In order to maintain this composition requirement, the HSA must submit to the Governor for his consideration, nominees to fill the appropriate consumer or provider vacancy.

OFFICIAL NOTICES

a. To replace a provider representative at least five nominees must be submitted who are providers of health care representing each of the following categories:

- i. health professionals
- ii. health care institutions
- iii. health care insurers
- iv. health professions schools
- v. allied health professions

b. To replace a consumer representative at least five nominees must be submitted who are consumers of health care. An effort should be made to include nominees representing the area's population (social, linguistic and racial) and local elected officials.

2. Each nominee will be required to complete a biographical sketch to accompany the nomination. The terms "consumer" and "provider" have those definitions set forth in the regulations of P.L. 93-641 and the operating procedures of the SHCC.

3. The governing body of each HSA will be responsible for the selection and submission of nominees to the SHCC. The list of nominees must be accompanied by a letter indicating official action taken by the governing body to approve these nominees.

4. Nominees must be residents of the appropriate health service area and the state of Minnesota. Persons employed as staff or as consultants to the HSA may not be nominated for appointment to the SHCC.

5. Nominations must be submitted to the Governor by February 12, 1979.

6. Nominations for members-at-large (members appointed by the Governor who do not represent HSAs) will be accepted from professional organizations, consumer organizations, and other interested parties.

7. Nominations are to be submitted to:

Office of the Governor
Room 130 State Capitol
St. Paul, Minnesota 55155
Attention: Mary Jo Richardson

Copies of nominations are to be submitted to:

State Planning Agency
101 Capitol Square Building
550 Cedar Street

St. Paul, Minnesota 55101
Attention: John Dilley

Questions concerning this process should be directed to Mr. Dilley at (612) 296-2407.

Department of Education Instruction Division

Notice of Intent to Solicit Outside Opinions Regarding Rules Relating to Health and Safety Education, Minimum Standards for Secondary Schools

The Department is drafting amendments to its rule, Chapter Eight, relating to the time allotment for secondary school health education, Edu 142.

The Department invites interested persons or groups to provide information, comments, and advice on the subject in writing or orally to Carl Knutson, Supervisor, Health, Physical Education and Safety, Minnesota State Department of Education, 683 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101.

Written statements will be made part of the public hearing record.

Energy Agency

Northern States Power Company Application for Recertification of the In-Service Date for Sherburne County Generating Unit No. 3

Notice of Postponement

Public hearings concerning the application of Northern States Power Company for recertification of the in-service date for Sherburne County Generating Unit No. 3 have been postponed.

The hearings will reconvene on February 1, 1979, 9:30 a.m., in Courtroom No. 2, Seventh Floor, Federal Building, St. Paul.

For further information, contact Arthur L. Adiarte,

OFFICIAL NOTICES

Energy Facility Analyst, Minnesota Energy Agency, 980 American Center Building, 150 E. Kellogg Blvd., St. Paul, MN 55101, telephone (612) 296-8279.

January 5, 1979

David L. Jacobson
Manager
Certificate of Need Program

Ethical Practices Board

Request for Advisory Opinion Regarding Campaign Finance — Effective Dates of Tax Credit Agreement

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which may be acted upon by the Board at its next meeting on Wednesday, January 17, 1979, 1:30 p.m., in Room 42, State Office Building.

December 26, 1978

Mr. B. Allen Clutter
Executive Director
Ethical Practices Board
41 State Office Building
St. Paul, Minnesota 55155

Dear Mr. Clutter:

I have received a copy of the tax credit agreement form which needs to be executed for my contributors to be entitled to receive a credit against their taxes for political contributions to my principal campaign committee. My execution of this agreement serves to bind me to the campaign expenditure limits. However, I am unclear as to what length of time these restrictions on expenditures would apply until the filing for office in 1980 or 1982.

The applicable statute reads: "remains effective until . . . the opening of filings for the next succeeding election to the office held or sought at the time of the agreement". Does succeeding election to the office held mean the impending election (1980) or the following election (1982)?

Thank you for your consideration of this matter.

Sincerely,

Robert O. Ashbach
Senate Minority Leader

Minnesota Sentencing Guidelines Commission

Notice of Public Meeting

The next regular business meeting of the Sentencing Guidelines Commission will be held:

Thursday, January 18, 1979 — 5:00
Room 215 (Iroquois Room)
Thunderbird Motel
2201 E. 78th Street
Minneapolis, MN

For additional information, contact Commission staff, Suite 284 Metro Square Building, St. Paul, Minnesota 55101, telephone (612) 296-7508.

Minnesota State Retirement System

Special Meeting, Board of Directors

Notice is given that the Chairman of the Board of Directors, Minnesota State Retirement System, has called a special meeting of the Board to be held at 1:00 p.m. on January 19, 1979, in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

The purpose of the meeting is to review proposals submitted for evaluation of the MSRS data base project and to select the consultant to perform the task.

Pollution Control Agency

Order and Notice of Hearing Regarding State Disposal System Permit for the Army Corps of Engineers Dredge Material Disposal on the Mississippi River, the St. Croix River and the Minnesota River

It is hereby ordered and Notice is hereby given that a contested case public hearing concerning the above-entitled matter will be held at the Minnesota Pollution Control Agency Board Room located at 1935 West County Road B2, Roseville, Minnesota, commencing at 9:30 a.m. on

OFFICIAL NOTICES

Tuesday, February 13, 1979, and continuing until adjourned by the Hearing Examiner. For the purpose of taking testimony from the public pursuant to 9 MCAR § 2.210 E., a session of the public hearing will be held at Winona, Minnesota, in the Winona Area Technical Institute Room #353, 1250 Homer Road, commencing at 2:00 p.m. and again at 7:00 p.m. on February 14, 1979.

A prehearing conference will be held at a time to be determined by the Hearing Examiner. Those persons who want to be notified of the time and place of the prehearing please contact the Hearing Examiner at the address indicated below. The purpose of the prehearing conference is to identify specific issues for hearing, identify the parties to the hearing, establish a timetable for exchange of written testimony and other discovery, and to schedule any other preliminary proceeding which may be necessary. All parties and those who intend to participate as parties in the hearing are advised to attend.

The hearing will be held before Myron Greenberg, Hearing Examiner, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota, telephone (612) 296-8109. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. § 15.0411 through Minn. Stat. § 15.052 and 9 MCAR §§ 2.201-2.222 (the Rules of the Office of Hearing Examiner). Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General William P. Donohue, Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota, telephone (612) 296-7345.

The Corps of Engineers has applied to the MPCA for a permit pursuant to Minn. Stat. § 115.07 (1978) to dispose of material dredged from the bottoms of the Mississippi, St. Croix, and Minnesota Rivers. The Corps conducts such dredging in order to maintain the navigation channels authorized by Congress in these rivers. The Corps' permit application includes a request for variances from certain MPCA rules in order to conduct their dredging activities. These include variances from the effluent limitations of Minn. Rule WPC 15(c)(6) for all their disposal facilities, the direct in-water placement of dredged material in a number of instances, and the rehandling of the dredged material in the rivers prior to on-land placement of the material. Copies of the application are available at the MPCA general office address listed below.

In response to the Corps' application, the MPCA staff has prepared a proposed permit. This permit which will expire at the end of one year includes among other things the following significant features:

(1) an authorization to dispose of dredged material in on-land and confined on-land placement sites at various locations along the Rivers;

(2) a procedural mechanism which allows the MPCA Board to grant exceptions to the requirement of on-land or confined on-land disposal based on a showing of need and an analysis of environmental effect by the Corps;

(3) conditions allowing dredging and disposal under emergency conditions and when a closure of the navigation channel is reasonably foreseeable.

Copies of the proposed permit will be mailed on request to the MPCA at the address listed below.

The purpose of the hearing which is being held pursuant to Minn. Stat. §§ 115.03 and 116.07 (1978) is to receive and review testimony, evidence, and argument relating to the terms and conditions of the proposed permit. Issues which have been identified for hearing include the following:

(1) Whether the permit should include conditions requiring the Corps to seek additional funding for dredging during the 1980 season;

(2) Whether variances from MPCA rules should be granted;

(3) Whether authorization for open water disposal such as beach nourishment should be included in the permit.

Other issues to be considered at the hearing will be identified through the prehearing processes. No further notice of additional issues to be considered will be given.

Any person may petition to INTERVENE as a party to the hearing in accordance with 9 MCAR § 2.210. All such petitions shall be submitted to the Hearing Examiner no later than January 31, 1979, except upon a showing of good cause for later intervention. All such petitions must be served on all other parties.

Persons who do not wish to become parties may participate in the hearing, in the discretion of the Hearing Examiner, by giving testimony and offering exhibits. However, persons not admitted as parties will not be allowed to present argument, file written briefs, or exercise those rights normally incident to party status.

All parties are advised that if a party intends to appear at the hearing the Notice of Appearance form enclosed with this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. Should a

OFFICIAL NOTICES

party fail to appear at the hearing, the permit described herein may be issued as proposed.

By this notice the MPCA is also seeking written comment on the draft permit. Comments and requests for copies of the proposed permit and application should be mailed to the following address no later than February 13, 1978:

Attention: Ms. Terry Mader
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113

Any written comments received will be offered as part of the hearing record.

The above cited procedural rules are available at the Office of Hearing Examiners or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, St. Paul, Minnesota 55155 (296-

2874). They provide generally for the procedural rights of the parties including: right to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the Agency and any other parties.

Dated: January 8, 1979

Sandra S. Gardebring
Executive Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the State
Disposal System Permit for the
Army Corps of Engineers Dredge
Material Disposal on the
Mississippi River, the St.
Croix River and the Minnesota
River

Date of Hearing: February 13, 1979

Name and Telephone Number of Hearing Examiner: Myron Greenberg, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8100.

TO THE HEARING EXAMINER:

You are advised that the party named below will appear at the above-entitled hearing.

Name of Party: _____

Address: _____

Telephone Number: _____

Party's Attorney or Other Representative: _____

Office Address: _____

Telephone Number: _____

Signature of Party or Attorney: _____

Date: _____

MINNESOTA POLLUTION

CONTROL AGENCY

NOTICE OF APPEARANCE

Office of the Secretary of State Administration Division

Open Appointment Process: Notice of Openings on State Agencies — Application Procedures

Pursuant to Laws of 1978, ch. 592, the legislature has implemented an Open Appointment process by which the public is informed of openings on state multi-member agencies (boards, commissions, councils) created by statute and having statewide jurisdiction.

Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul, MN 55155, (612) 296-3266. Contact the Secretary of State for the Open Appointment Process information brochure and specific agency related information. **Application deadline February 2, 1979.**

ECONOMIC DEVELOPMENT ADVISORY COMMITTEE: 21 positions to be reappointed or replaced. This advisory committee to the Commissioner of Economic Development requires two members from each congressional district and five members at large.

BOARD OF NURSING: One vacancy for a public member. The board meets four times per year.

VETERANS ADVISORY COUNCIL: Five openings for members willing to examine issues and problems relating to veterans. Two meetings a month are required.

Errata

At 3 S.R. 1353, change "Notice and Adopted Rule Regarding the Administration of the Construction Grants and Loans Program" to read: "Notice and Adopted Rules Regarding the Administration of the Construction Grants and Loans Program (WPC 34)"

At 3 S.R. 1354, make the following changes:

Change "Amendments as Adopted" to read "Rules as Adopted"

Change "B.18." to read "WPC 34 B.18."

Change "E.9.1." to read "WPC 34 E.9.1."

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
(612) 296-8239

ORDER FORM

State Register. Minnesota's official weekly publication for agency rules, notices and executive orders.

- _____ Annual subscription \$110.00
- _____ Additional subscription \$85.00
- _____ Single copy \$2.25 each

State Register Finding Aids Annual. Contains cumulative finding aids to Volume 2 of the *State Register*, including Subject Matter Index, Agency Index, MCAR Amendments and Additions, and Executive Order List.

- _____ Single copy \$3.00 each

State Register Binder. Durable 3½ inch, forest green binders imprinted with the *State Register* logo.

- _____ *State Register* Binder \$5.00 + \$.20 (sales tax) = \$5.20* each

Minnesota Code of Agency Rules (MCAR). The permanent, 15 volume set of state agency rules. An indispensable reference work for the practice of administrative law.

- _____ 15 volume set \$325.00, includes the annual update service subscription for the year of order (a \$105.00 value) and a set of MCAR binders.

MCAR Binders. A set of 15 sturdy, three-inch, three-ring binders in attractive forest green, imprinted with the MCAR logo.

- _____ 15 volume set \$35.00 + \$1.40 (sales tax) = \$36.40*

Guidebook to State Agency Services. A detailed guide to every service available to the public.

- _____ Single copy \$4.95 + \$.20 (sales tax) = \$5.15*

Audio-Video Resources of Minnesota State Agencies. A 250-page catalog of films, records, slides, and tapes available to the public.

- _____ Single copy \$3.85 + \$.15 (sales tax) = \$4.00*

*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Minnesota Department of Revenue.

Please enclose full amount of items ordered. Make check or money order payable to "Minnesota State Treasurer."

Name _____

Attention to: _____

Street _____

City _____ State _____ Zip _____

Telephone _____

Legislative Reference Library
Attn: Stephen Plumb
Room 111 State Capitol
INTEROFFICE

r